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WATER POLLUTION:

Interior's mine spill report ratchets up pressure on EPA

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Yesterday's Department of the Interior release of its investigation into this summer's abandoned mine spill in Colorado is intensifying scrutiny of U.S. EPA's role in the accident.

EPA has long pointed to the report as an independent probe into the incident and one that would provide clarity about the agency's work at the Gold King mine site. But EPA critics are only intensifying their questions after its release.

"This report exposes the role the EPA's gross negligence had in triggering a disaster that has culturally and economically devastated the Navajo Nation," said Navajo Nation President Russell Begaye. "The EPA and all responsible parties must be held accountable."

EPA was at Gold King at the request of Colorado regulators to help prevent a polluted water blowout from the abandoned mine site. But agency contractors instead caused 3 million gallons to spill down the Animas and San Juan rivers, affecting several states and tribes.

Yesterday's Bureau of Reclamation [report](#) said EPA and its contractor, Environmental Restoration LLC, could have prevented the blowout by conducting more planning and research into the amount of water that had built up.

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The report also said EPA could have waited for a Reclamation consultant set to visit the site ([E&ENews PM](#), Oct. 22). And it blames state regulators for an inadequately designed mine portal closure in 2009. The report also lamented a general lack of mine engineering experience in abandoned site reclamation work.

Sen. John Barrasso (R-Wyo.), chairman of the Senate Indian Affairs Committee, said in a statement, "Literally and figuratively, the EPA blew it."

Rep. Lamar Smith (R-Texas), chairman of the House Science Committee, said, "In the aftermath of the spill, EPA attempted to avoid responsibility by claiming the spill was 'inevitable.' However, the Interior Department's report clearly shows this was not the case."

Barrasso went on, "Responsibility for this disaster lands directly on the EPA's doorstep. I want to know who at the EPA will be held accountable for this disaster."

EPA, however, has not said whether it will discipline any staffer. It also has not provided specifics on how

it has addressed the issue with its contractor, which has not returned a request for comment on the new report.

In a statement yesterday, the agency said it requested the Interior report "to provide an independent assessment of factors that contributed to the Aug. 5, 2015, Gold King incident. EPA will carefully review the report." The Office of Inspector General is also looking at developments surrounding Gold King.

The agency said, "This report, in combination with the findings of EPA's internal review of the incident, will help inform EPA's ongoing efforts to work safely and effectively at mine sites as we carry out our mission to protect human health and the environment."

But the report's authors noted they did not think their task was to find who was at fault. An Army Corps of Engineers peer reviewer said he would have wanted to see more information about EPA's handling of Gold King.

The current owner of the Gold King mine site, Todd Hennis, also released a statement in response to the Interior Department report. He has long accused regulators of not listening to his concerns and originally didn't want EPA on his property.

Hennis blames water from other mine sites seeping into Gold King and says EPA made the situation worse by putting backfill material on the mine's entrance.

"The act of placing such a large amount of backfill on the entrance of the Gold King Mine also prevented the pressure of the water from clearing an outlet of the waters naturally," he said.

EPA said the agency has been in contact with Hennis' attorneys. EPA also has taken responsibility for the spill, halted other similar work and promised to compensate those affected. The agency said the Animas and San Juan rivers are back to pre-spill conditions.

But Begaye said, "It's time for President Obama to stop dragging his feet and take action to fix this disaster. The president needs to respond to bipartisan calls to issue an emergency declaration and instruct all federal agencies to assist the Navajo Nation instead of sending our requests back to the EPA."

Legislation next week

EPA's defenders say blaming the agency for Gold King is like blaming firefighters for responding to a crisis. They say the agency is stepping up to help address potential abandoned mine site disasters because nobody else is or can.

The agency has spent roughly \$500 million in addressing several dozen priority abandoned mine sites in recent years, a top EPA official said this week.

Next week, Sens. Tom Udall and Martin Heinrich and Rep. Ben Ray Luján, all New Mexico Democrats, plan to introduce mining law reform legislation, which would create a system for reclaiming old mine sites by charging current production. Such a proposal would mirror one already existing in the coal industry.

Reform proponents also say mining companies have too much leeway in mining on public land. Just this week, small-scale Oregon miners sued the state in federal court over rules to protect salmon, saying the measures infringed on their rights under current federal mining laws.

The same New Mexico Democratic lawmakers have introduced legislation to create a compensation office focused on Gold King to address concerns from states, tribes and affected parties about being made whole.

Republicans also have introduced compensation bills geared toward holding EPA liable and making the agency pay out of its own budget.

When it comes to abandoned mine cleanups, Republicans and the mining industry lean toward liability protections for good Samaritan groups and companies (*E&E Daily*, Oct. 22).

"There's a better way to address contamination in abandoned and inactive mines than the EPA's status quo, which lacks the technical expertise to accomplish the goal," said proponent Rep. Scott Tipton (R-Colo.).

"By empowering the people on the ground who have the engineering expertise and have been working locally to address the problems in these mines for years, we can truly make strides to clean them up and limit further harm to the environment," he said.

Still, environmental advocates say good Samaritans alone are not enough to fix the problem. And the disagreement over how to clean up abandoned mine sites may, as in previous years, prevent any concrete action on Capitol Hill.

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